

Being an Effective and Influential Guardian in Changing Times

An Information Booklet for Guardians
of Individuals who are Protectively
Placed and Living at a State Center

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Why We Created This Booklet

- To provide guardians with an updated view of changes currently taking place within the state that are likely to affect current State Center residents.
- To encourage guardians to recognize the advantages of taking a more active role in the planning and review processes that determine the appropriate residential setting for the person they represent.
- To help guardians understand why having information about community services and supports could help them be a more effective and influential guardian, even if community placement is not something a guardian currently wants for the person they represent.
- To encourage guardians to contact the Guardian Mentor program when they have questions, or need assistance with issues related to the long term living arrangements for the person they represent.



Why Guardians May Find It Beneficial to Contact the Guardian Mentor Program

- The Guardian Mentor program is interested in sharing information that will help guardians support the people they represent.
- The Guardian Mentor Program has some facts about the changing times in our State that we believe guardians of State Center residents should know about.
- The Guardian Mentor Program does not take a position for or against the changes taking place. We only seek to help guardians work through the process to assure that the needs of the people they represent are met, both now and in the future.

Changing Times

For People who are Protectively Placed and Living at a State Center:

Understanding the Position of the Department of Health and Family Services, which Operates Southern and Central Wisconsin Centers

- According to the Department of Health and Family Services (DHFS), constitutional law states that a person deprived of his/her liberty through a protective placement order is entitled to receive whatever services are provided by public agencies in the least restrictive setting that can meet the person's needs.
- The DHFS, as a public agency, views itself as having an affirmative obligation under federal and state law to explore whether there is a less restrictive setting that can meet the needs of each individual currently living at a State Center.
- The DHFS has provided funding to support relocation of consumers to the community for over twenty years now. Counties are responsible for the protective placement of individuals in the State Centers. They must review the appropriateness of those placements and report to the court about whether the State Center placement is the least restrictive that is available.
- The DHFS believes, based on experience, that Wisconsin counties and community service providers have significant capacity to provide care for people with developmental disabilities who have more complex behavioral and medical support needs.
- The DHFS believes that community services offer more choices to persons and their guardians, and community living will broaden the scope of the resident's life by including them in community-related opportunities such as shopping, recreational, and educational activities. The DHFS also believes that community living creates the possibility that individuals can live closer to their families.
- The DHFS believes that offering small integrated and individualized community living alternatives is the right thing to do. The DHFS bases this belief on feedback from guardians who represent people who have moved from institutions, especially the State Centers. These guardians have a high satisfaction level with services provided in the community once the person has moved.
- The DHFS also reports having committed a significant increase in funding to assist people living in State Centers to move to less restrictive and more integrated settings. From 1984 to 2004, the State increased funding for State Center residents to relocate to the community by an annual average of \$3,285 per year or \$9 per day. In 2005, the State increased the funding by \$36,500 per year or \$100 day.

What does Wisconsin Law Require of Court-Appointed Guardians of State Center Residents?

The law states that a legal guardian is expected to:

- 1) Advocate for the appropriate protective placement. [§880.38(2) Wis. Stats.]
- 2) Ensure the ward is living in the least restrictive environment consistent with the needs of the ward, and report on this annually to the court that ordered the guardianship, and to the county of responsibility. [§880.38(3) Wis. Stats.]

The law limits a legal guardian's powers to determine where the ward will live, in that it says:

A guardian may not make a permanent protective placement of the ward unless that placement is ordered by a court. [§880.38(1) Wis. Stats.]



What does “Least Restrictive Environment” Mean for Protectively Placed Individuals Living in State Centers?

Generally, courts interpret the meaning of least restrictive environment as:

“Providing each individual with the least restrictive treatment and living conditions which will allow the maximum amount of personal and physical freedom.”

(This definition is drawn from the Federal Rehabilitation Act of 1973.)

Guardians Ad Litem, legal guardians, and the court ensure that protectively placed individuals are living in the least restrictive environment that can meet their needs.

The court must decide annually (in a Watts Review hearing) whether the person is living in the least restrictive environment.

Once a year, the legal guardian and the Guardian Ad Litem are required to determine whether the person is living in the least restrictive environment that is available, **and** that can meet the needs of the person, including their health and safety needs. The legal guardian and the Guardian Ad Litem are required to report their determination to the court and the county of responsibility in preparation for the Watts Review hearing.

Understanding Watts Reviews: The Court Review Process that Determines Where a State Center Resident Will Live

- A Watts Review is an annual review of protective placement ordered by the court that had originally protectively placed the person.
- State law requires a Guardian Ad Litem to be appointed and paid by the county of responsibility. The “GAL” reviews the case, visits the person, requests information from the county and the legal guardian, and then submits a recommendation to the court about whether the person should continue to live in the same place or should move to a different living arrangement.
- At the Watts Review hearing, the court determines whether to continue the person’s current living arrangement or consider if a change to a new living arrangement is necessary and beneficial for the person.
- Guardians have the right to participate in the Watts Review hearing. Read on to find out how.



Rights of Legal Guardians in Watts Reviews

Guardians can make decisions on behalf of the ward, including requesting that an independent evaluation be conducted or requesting legal counsel to represent the ward.

Guardians also have the right to influence the court in other ways and may:

- 1) Present their point of view to the court during the Watts review.
- 2) Hire their own legal counsel to represent them.
- 3) Present an independent evaluation to the court.
- 4) Request a review of a protective placement in-between annual Watts reviews.
- 5) Request that the protective placement decision be conditional based on certain requirements that need to be met.

Why Counties Might Now Be More Likely to Initiate Discussions About Transition Planning for the Person You Represent

- 1) Significant increases in funding for community services are now available for people leaving State Centers. (\$100 a day or \$36,500 a year more than was previously available.)
 - 2) More people are being identified as “eligible to receive services through a community based services waiver” in the Utilization Reviews (UR’s) done by the State each year.
 - 3) Counties will receive notices about which State Center residents could be supported in the community with the new funding rates. If counties don’t successfully appeal the notices or initiate a planning process to look at relocating these residents, they may incur additional costs to keep these residents at the State Centers.
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What You Should Do if a County Contacts You

If a county notifies you that they have received a “Charge-Back” notice from the State for the person you represent:

- 1) Ask the county to send you a copy of the notice so you can see exactly what it says.
- 2) Ask the county what they plan to do in response to the notice.

If you are asked to sign a consent form to allow assessments and planning to take place in order to determine if your ward could live in a less restrictive setting:

- 1) Consider signing to demonstrate to the court that handles Watts Reviews for your person, that you are doing what State law requires of legal guardians: you are participating in determining if the person you represent is living in the least restrictive environment that can meet their needs.

- 2) Before you sign, ask that the consent form include specific language that says the following:

*By signing this consent form for transition planning, I am **not** consenting to the relocation of the individual I am guardian for. I am signing this consent form to help me determine if the person I am guardian for is living in the least restrictive environment that can meet their needs.*

I give my consent for the transition planning process to take place, **with these conditions:**

Examples:

- 1) *I must be involved in the planning process.*
- 2) *Meetings must be scheduled so that I can attend them.*
- 3) *I must have the opportunity to visit potential community placements, so that I can truly compare options.*

If You Consent to Allowing Assessment and Planning...

This does not mean...

- That you have authorized anyone to actually move the person from the State Center to anywhere else.
- That you believe that community placement is appropriate for the person.

This does mean...

- That you are **only** consenting to an assessment and planning process that will evaluate the needs of the individual, and whether the State Center is the least restrictive place where those needs can be met.
- You are keeping yourself involved in the planning process.

If you are asked to participate in the assessment and planning process, consider the following reasons why you might want to agree to do this, even if you don't believe community placement is appropriate:

- 1) It shows that you are willing to consider options and reach an informed conclusion about where the person should live.
- 2) It gives you the ability to maintain a level of control over the planning process.
- 3) It helps to assure that any placement recommendations meet the needs of the individual.

The Assessment and Planning Process

If you become involved in the planning process, what types of questions should you be asking about placement, program support, etc:

- Who will be involved in the assessment and planning process besides me?
- What is the actual process that will be followed, and what is the timeline for taking each of the steps involved in the process?
- How will we agree, at the beginning, what **all** of the person's needs are, so that we are all clear about what an acceptable living arrangement **must** be able to address?
- Will the process include developing alternative placement plans, or alternative resources for support services, if the initial residential placement and support services do not work out?
- What are the various residential living options available, and how will I have the opportunity to determine if any of them can meet the defined needs of the person?
- Request that you be given the opportunity to visit various residential settings so you can see the place and how the individuals living there are supported?
- Don't accept seeing just one residential setting, or just one provider of services.
Ask to visit several residences run by different providers?
- Beyond residential, what are the various community services that are available, to meet the needs of the person?

Examples: Medical and dental services.
Employment, education, and day service options.
Recreational activities.

- How do the state, county, and the community service providers ensure quality in the services being provided, and how do they discover and correct problems if there are any?

What Should You Do if You are Asked to Consider Community Residential Living Options?

If you are asked to look at and consider community residential living options...

Take the opportunity to visit a number of places.

Do this so you can show the court you have considered the options and you are basing your opinion on where the person should live on a thorough consideration of the options.

Do this to avoid having your opinion called into question at a Watts Review because you have refused to compare the options and reach an informed conclusion about what is best for the person you represent.

What Should You Do If You Are Asked to Sign a Community Placement Plan, Giving Consent for Your Ward to Move Out of the State Center?

If you are asked to sign a document, giving your consent for the relocation to occur.

The choices you have:

- 1) Sign.
- 2) Don't sign.
- 3) Sign with conditions.

Example: I understand that if I sign this transition plan and consent to the relocation of the individual I am guardian for, I can make a request to the county that the person be considered for an alternative placement if it is clear to me that the initial community placement is not meeting the person's needs.

- 4) Delay signing until certain conditions are met.

Example: I am prepared to sign this transition plan when a doctor has been identified and has agreed to accept the person I am guardian for as a patient.

What Should You Do if You are Faced with a County that is Prepared to Challenge Your Position During the Watts Review?

- 1) Make sure you have done your homework. Make sure you can demonstrate that you have taken time to consider the results of the assessment and planning process, and you have specific reasons why you believe what the county is proposing is not in the best interests of the person.
- 2) Share your point of view with the Guardian Ad Litem, before the Watts review hearing.
- 3) Keep in mind that the judge is likely to give your opinion more weight if:
 - a. You have participated in the assessment and planning process.
 - b. You have visited and looked at community placements, so you have a good understanding of what the community can offer.
 - c. You are familiar with what is proposed in the plan the county is presenting to the court.
- 4) Exercise your rights as outlined on page 5 of this booklet.



How Can Guardians Be Most Influential Given These Changing Times?

- 1) **Become actively involved in supporting the individual wherever they live:**
 - Take an active role in advocating for the individual you are responsible for.
 - Become involved in decisions about how the individual will be supported and cared for by attending program reviews, staffing reviews, and requesting timely feedback on any issues that may arise.
 - Be pro-active in suggesting recommendations that you think will help the residential provider and program coordinators more effectively support the individual you are responsible for.

Do not be afraid to contact the county developmental disabilities services manager or case management supervisor if you notice support issues that surface between the normal review and planning meetings that are held each year.

Know ahead of time who to contact if you have an issue that needs to be resolved.

Visit the person's residence on a regular basis in order to get to know the staff members and to spend time with and observe the individual in the residence.

Talk to other guardians who have individuals in similar settings, or individuals being supported by the same providers, and compare notes on how they feel about the residential setting and staff.

Ask other family members to become involved in understanding what services your individual needs, and who they should be approaching to make sure the services continue successfully, if you cannot continue in an active role as the primary guardian.

Consider appointing a stand-by guardian and involving them in advocating for the person, so they can help you and learn from you, before it comes time for them to take over as primary guardian.

2) Become involved in supporting the developmental disabilities service system as a whole:

Become a member of a local committee that is involved with supporting advocacy or raising awareness to benefit people with developmental disabilities.

Attend county developmental disabilities services committee meetings as an interested guardian/citizen to get a feel for the long-term strategy for services for people with developmental disabilities.



Call the Guardian Mentor Program For:

Help

Advice

Information

Someone to Talk To

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